



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

**401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534**

December 3, 2009

Mr. Jeff Martin
Wildlife Manager II
TWRA
6590 Knox Daniel Road
Union City, TN 38261

Subject: NPDES Permit Tracking No. TNHAR0000
Reelfoot Lake Contact Aquatic Herbicide Application GP
Tiptonville, Obion County, Tennessee

Dear Mr. Martin:

In accordance with the provisions of the Tennessee Water Quality Control Act, Tennessee Code Annotated, Sections 69-3-101 through 69-3-120, the Division of Water Pollution Control hereby issues the enclosed NPDES Permit. The continuance and/or reissuance of this NPDES Permit is contingent upon your meeting the conditions and requirements as stated therein.

Please be advised that you have the right to appeal any of the provisions established in this NPDES Permit, in accordance with Tennessee Code Annotated, Section 69-3-105(i), and the General Regulations of the Tennessee Water Quality Control Board. If you elect to appeal, you should file a petition within thirty (30) days of the receipt of this permit.

If you have questions, please contact the Division of Water Pollution Control at your local Field Office at 1-888-891-TDEC; or, at this office, please contact Ms. Erin O'Brien at (615) 253-2245 or by E-mail at Erin.O'Brien@tn.gov.

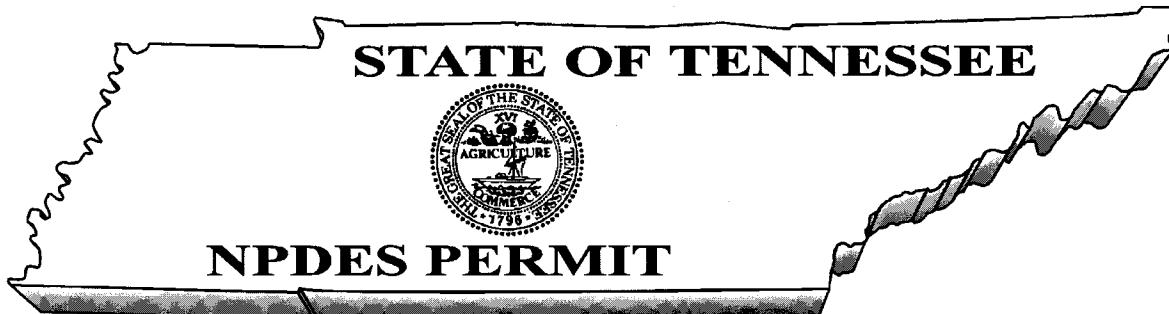
Sincerely,

A handwritten signature in black ink, appearing to read "Vojin Janjić", is written over a circular stamp that partially obscures the signature.

Vojin Janjić
Manager, Permit Section
Division of Water Pollution Control

Enclosure

cc: DWPC, Permit Section & Jackson Environmental Field Office
Mr. Alan Whited, 5030 Rogers Marshall Rd, Union City, TN 38261
ec: Ms. Deb Pierce, USFWS, deborah_pierce@fws.gov
Mr. Mike Hayes, Commissioner, TWRA, mike@bluebankresort.com
Mr. Randy Cook, Refuge Manager, West Tennessee Refuges, USFWS, randy_cook@fws.gov
Mr. Allen Pyburn, Aquatic Habitat Biologist, TWRA, allan.pyburn@tn.gov
Mr. Robert M. Todd, Fish and Wildlife Environmentalist, TWRA, Rob.Todd@tn.gov



GENERAL NPDES PERMIT FOR

APPLICATION OF CONTACT AQUATIC HERBICIDES
TO REELFOOT LAKE

PERMIT NO. TNHAR0000

Under authority of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.), owner/operators or persons are authorized to apply contact herbicides to waters of the state, in accordance with the following permit requirements as set forth in parts I through VII herein, to Reelfoot Lake, a water of the State of Tennessee.

This permit is issued on: December 3, 2009

This permit is effective on: January 1, 2010

This permit expires on: December 31, 2014

 FOR

Paul E. Davis, Director

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Reelfoot Lake Contact Aquatic Herbicide NPDES GP
Introduction and Reporting Requirements

Introduction --

The following document is a State of Tennessee permit that authorizes the application of contact aquatic herbicides to the Tennessee portion of Reelfoot Lake. To obtain coverage under this permit, one must comply with all terms and conditions required by the Tennessee Wildlife Resources Agency (TWRA) through its individual Vegetation Manipulation permit program. Appendix A of this permit contains the TWRA permit application.

This permit is a state-issued general permit, with a permit number of TNHAR0000. A general permit is one designed to apply to a category of sources that involve the same or substantially similar operations, discharge the same types of wastes, and require the same or similar permit conditions and monitoring provisions.

Detailed information regarding the aquatic herbicide application program can be found at the web site <http://www.state.tn.us/environment/permits/herbicide.shtml>. In order to get more information regarding the Division of Water Pollution Control (the division) permitting program, we ask you to visit our web site located at: <http://www.state.tn.us/environment/permits/>. At our web site, you will be able to download general and specific permit requirements, permit forms, public notices, find question and answer documents, links to other relevant web sites, etc. You can contact us by sending an E-mail to ask.tdec@tn.gov. If you do not have access to the Internet, or have other questions, please contact us at 1-888-891-8332 (TDEC).

Reporting requirements of this permit --

This permit requires that TWRA provide an annual report to the division that summarizes all contact aquatic herbicide application activities on Reelfoot Lake. This report is due starting one year after this permit's effective date, and annually thereafter, and should contain information regarding the types and amounts of herbicides actually applied, the extent of the areas treated, and type of aquatic vegetation treated, and a map showing the locations of all permitted application sites.

I. COVERAGE UNDER THIS GENERAL PERMIT**A. Permit Area**

The permit is being issued for the Tennessee portion of Reelfoot Lake. This permit does not apply to the portion of Reelfoot Lake that is contained within the Reelfoot Lake National Wildlife Refuge.

B. Jackson EFO Address and Phone Number

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300

All Environmental Field Offices (EFOs) may be reached by telephone at the toll-free number 1-888-891-8332 (TDEC).

C. Eligibility**1. Activities Covered**

This permit addresses application of contact aquatic herbicides to Reelfoot Lake. This permit is issued to be effective for a term of five years.

This permit allows only the use of herbicides approved by the Tennessee Department of Agriculture (TDA) for the control of both emergent and non-emergent aquatic plants growing in waters that support fish and aquatic life and applied in accordance with TDA regulations.

TDA regulations and this permit require that an individual applying contact aquatic herbicides must be licensed or working under the supervision of someone with a license. There are other requirements as well, which are found in Chapters 0080-6-14 and 0080-6-16 of the rules that implement the Tennessee Insecticide, Fungicide and Rodenticide Act (43-8-101, et. seq.).

The rules can be found at <http://www.state.tn.us/sos/rules/0080/0080-06/0080-06.htm>. For further information concerning TDA's requirements contact the Regulatory Services Division at (615) 837-5103.

Application of herbicides is limited to a total treatment area of four acres (174,240 square feet) or less around duck blinds or other fixed structures. Square footage determination will include the treated area along boat channels and/or along boat lanes to provide blind access, in addition to the treated area around the structure(s).

TWRA is authorized to further limit the treatment area at specific sites in order to avoid cumulative impacts due to the close proximity of other permitted application sites.

2. Limitations on Coverage

This permit does not apply to discharges or activities that the director determines are contributing or may reasonably be expected to be contributing to a violation of a water quality standard, or to any person who discharges in violation of the Water Quality Control Act, or the regulations promulgated thereunder.

3. Threatened and Endangered Species Protection

Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat, or to cultural, historical, or archeological features or sites is prohibited.

4. Permit Eligibility Regarding Protection of Water Quality Standards and Compliance with State Anti-Degradation Requirements

The application of pesticides to control nuisance aquatic weeds is allowed so long as the conditions of this permit are satisfied and the transitory water quality impact is limited to the vicinity of the herbicide application and to the minimum time necessary to accomplish the desired aquatic pest control objectives.

Pursuant to the Rules of the Tennessee Department of Environment and Conservation (TDEC), Chapter 1200-4-3-.06, titled "Tennessee Antidegradation Statement," the permittee is not authorized to conduct any activity that will result in permanent degradation.

II. AUTHORIZATION UNDER THIS PERMIT

Except as provided in subparagraph I.C.2 above (Limitations on Coverage), a person is permitted to apply contact aquatic herbicides to the Tennessee portion of Reelfoot Lake in accordance with the terms of this permit and of T.C.A. § 69-3-108(b). Any discharges or activities not permitted under this permit or by an individual permit are unlawful under T.C.A. § 69-3-108(b). The division may grant or deny coverage under this permit or require an application for an individual permit. General permits may be issued, modified, revoked, reissued or terminated in accordance with this permit and the applicable requirements of T.C.A. § 69-3-108.

III. REPORTING

A. Annual Report

TWRA must provide an annual report summarizing herbicide application activities to the Division of Water Pollution Control beginning one year after this permit's effective date, and annually thereafter.

B. Where to Submit

Annual reports must be sent to:

**Tennessee Division of Water Pollution Control
Enforcement and Compliance Section
Attention: Compliance Review
6th Floor L & C Annex
401 Church Street
Nashville, TN 37243**

IV. STANDARD PERMIT CONDITIONS

A. Duty to comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Tennessee Water Quality Control Act (TWQCA) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

Pursuant to T.C.A. § 69-3-115 of The Tennessee Water Quality Control Act of 1977, as amended:

1. any person who violates an effluent standard or limitation or a water quality standard established under this part (T.C.A. § 69-3-101, et.seq.); violates the terms or conditions of this permit; fails to complete a filing requirement; fails to allow or perform an entry, inspection, monitoring or reporting requirement; violates a final determination or order of the board, panel or commissioner; or violates any other provision of this part or any rule or regulation promulgated by the board, is subject to a civil penalty of up to \$10,000 per day for each day during which the act or omission continues or occurs;
2. any person unlawfully polluting the waters of the state or violating or failing, neglecting, or refusing to comply with any of the provisions of this part (T.C.A. § 69-3-101, et.seq.) commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense;
3. any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or the commissioner, or who willfully and knowingly pollutes the waters of the state, or willfully fails, neglects or refuses to comply with any of the provisions of this part (T.C.A. § 69-3-101, et.seq.) commits a Class E felony and shall be punished by a fine of not more than \$25,000 or incarceration, or both.

C. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the discharger from civil or criminal penalties for noncompliance. Notwithstanding this permit, the discharger shall remain liable for any damages sustained by the State of Tennessee, including but not limited to fish kills and losses of aquatic life and/or wildlife, as a result of the discharge to any surface or subsurface waters. Additionally, notwithstanding this permit, it shall be the responsibility of the discharger to conduct its contact aquatic herbicide application activities in a manner such that public or private

nuisances or health hazards will not be created. Furthermore, nothing in this permit shall be construed to preclude the State of Tennessee from any legal action or relieve the discharger from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or the Federal Water Pollution Control Act.

D. Liability Under State Law

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable local, state or federal law.

E. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

F. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

G. Duty to provide information

The permittee shall furnish to the commissioner, within a reasonable time, any information which the commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the commissioner upon request, copies of records required to be kept by this permit.

H. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information to the director, he or she shall promptly submit such facts or information.

I. Signatory requirement

All applications, reports, or information submitted to the commissioner shall be signed and certified by the persons identified in Rules 1200-4-5-.05(6)(a-c).

J. Penalties for Falsification of Reports

Knowingly making any false statement on any report or form required by this permit may result in the imposition of criminal penalties as provided for in Section 309 of the Clean Water Act and in T.C.A. §69-3-115 of the Tennessee Water Quality Control Act.

K. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to Section 311 of the Clean Water Act or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

L. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

M. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

N. Other, Non-Storm Water, Program Requirements

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. Proper operation and maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems, which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

P. Inspection and entry

The permittee shall allow the commissioner, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the commissioner.

Q. Permit actions

This permit may be modified, revoked and reissued, or terminated for cause in accordance with this permit and the applicable requirements of T.C.A. § 69-3-108. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

R. Noncompliance

In the case of any noncompliance which could cause a threat to human health or the environment, the permittee shall report the noncompliance to the commissioner within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must be provided within five days of the time the permittee becomes aware of the noncompliance. The permittee shall provide the following information:

1. A description of, and the cause of the noncompliance;
2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
3. The steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

S. Adverse Impacts

The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

V. OTHER PERMIT CONDITIONS

A. Placement of signs

The permittee shall place and maintain at least two signs around the affected area before and during application and at least one week after application advising the public that herbicides are being used, the type of herbicide, and any applicable warnings. These signs must contain the name of the owner/operator or person to whom the permit is issued and a contact phone number. These signs should be a minimum of two feet by two feet (2' by 2') with one inch (1") letters, have a white background with black letters, made of durable material, and readable both from the water and from the shore.

CONTACT AQUATIC HERBICIDE APPLICATION
(PERMITTEE'S NAME)
(PERMITTEE'S PHONE NUMBER)
TNHAR0000
TWRA PERMIT NUMBER *****
TWRA, 731-253-7343
TENNESSEE DIVISION OF WATER POLLUTION CONTROL, JACKSON EFO
1-888-891-8332

B. Best Management Practices

The applicator shall comply with all pesticide label instructions. When application conditions in this permit issued by the department differ from those on pesticide labels, the more stringent of the two requirements must be complied with. However, no condition in this permit shall reduce the requirements on the pesticide label. All applicable federal, state, and local laws and ordinances shall be followed.

VI. REOPENER CLAUSE

If there is evidence indicating potential or realized impacts on water quality or on a listed endangered species due to any effluent discharge covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or an alternative general permit or the permit may be modified to include different limitations and/or requirements.

VII. DEFINITIONS

CALENDAR DAY, for the purpose of this permit, is defined as any 24-hour period.

DIRECTOR means the director of the Tennessee Division of Water Pollution Control, or an authorized representative.

SITE, for the purpose of this permit, shall mean the location at which the herbicide application will take place.

TWRA means the Tennessee Wildlife Resources Agency.

WATERS OF THE STATE or simply WATERS is defined in the Tennessee Water Quality Control Act and means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine to effect a junction with natural surface or underground waters.

NEXT PAGE (A-1): APPENDIX 1 – TWRA Permit Application

Reelfoot Wildlife Management Area
Vegetation Manipulation Application/Permit

Reelfoot Preservation Permit #or; _____
Sportsman's License # _____

Blind Site # _____
(If Applicable)

Purpose of Request: _____

Job Site Location: _____

Methods Used to Control Vegetation: _____

Person(s) Applying Control Methods: _____

Date Work Is To Be Completed: _____

*Diagram or map with correct compass direction orientation showing duck blind, shooting hole, trees, other vegetation, or physical features to describe site. Show site to be treated on map with exact dimensions of area to be sprayed or manipulated (i.e., strip 15' x 100' or a 50' x 50' square behind blind).

VIII. DIAGRAM OR MAP OF WORK SITE

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N

Herbicides must be EPA approved for aquatic habitats and applied at label recommended rates. All methods must comply with existing water quality standards. Applicant agrees to limit vegetation manipulation to items described in this permit.

Applicant Signature _____ Date _____

Application Approved _____

Area Manager _____ Date _____

Application Denied _____

Permit Expires On: _____ , _____

TDA regulations require that an individual applying aquatic herbicides must be licensed or working under the supervision of someone with a license. There are other requirements as well, which are found in Chapters 0080-6-14 and 0080-6-16 of the rules that implement the Tennessee Insecticide, Fungicide and Rodenticide Act (43-8-101, et. seq.). The rules can be found at <http://www.state.tn.us/sos/rules/0080/0080-06/0080-06.htm>. For further information concerning TDA's requirements contact the Regulatory Services Division at (615) 837-5103.

ADDENDUM TO RATIONALE INCLUDING RESPONSE TO COMMENTS

General NPDES Permit for Application of Contact Aquatic Herbicides to Reelfoot Lake

Permit No. TNHAR0000

December 3, 2009

Addendum prepared by: Ms. Erin O'Brien

The division held a public hearing for this permit on Monday, September 14, 2009 at 6:00 PM CST at the Reelfoot Lake State Park Visitors Center Assembly Hall. One individual elected to give testimony on the proposed permit. The individual wished to congratulate the Tennessee Department of Environment and Conservation for working with the Tennessee Wildlife Resources Agency to allow duck hunters the ability to treat nuisance vegetation.

In addition to a few minor editing changes, the division has made the following changes to the draft permit. Changes are based on feedback the division received from both EPA and from internal review.

- Section I.C.1 was modified to clarify that in addition to TDA requiring that individuals applying aquatic herbicides must be licensed or working under the supervision of someone with a license, that this permit also requires the same licensure. The third paragraph of section I.C.1 now states, *"TDA regulations **and this permit** require that an individual applying contact aquatic herbicides must be licensed or working under the supervision of someone with a license."* [Emphasis added.]
- It was noted that the permit requires the use of herbicides approved by the Tennessee Department of Agriculture (TDA) for the control of both emergent and non-emergent aquatic plants while the Rationale requires that herbicides be limited to those on the TWRA and EPAs lists of registered herbicides approved for use in water. The permit requirement as written in the draft permit is correct and will be retained in the final permit. The second paragraph of section I.C.1. states, *"This permit allows only the use of herbicides approved by the Tennessee Department of Agriculture (TDA) for the control of both emergent and non-emergent aquatic plants."* A listing of herbicides registered by the TDA is available under "Online Pesticide Systems" on their website at www.state.tn.us/agriculture/regulatory/aip.html.

